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MONTANA CONSTITUTIONAL CONVENTION

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BILL OF RIGHTS COMMITTEE PROPOSAL

No. VIII

Date Reported: February 23, 1972

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Date: February 22, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Bill of Rights Committee

Ladies and Gentlemen:

The Bill of Rights Committee submits herewith a proposed new Declaration of Rights of the People of the State of Montana. The proposed article is intended to replace in its entirety Article III of the present constitution. In doing so, the committee notes that not one of the traditional rights of that Declaration has been diminished; and, to meet the changing circumstances of contemporary life, new safeguards have been added where appropriate.

In its deliberations, the committee was careful to give consideration to all proposals concerning civil liberties. No proposal was adopted or rejected without considered deliberation. The committee is pleased to have reached near unanimity on such an important matter as the basic rights of an individual in a free society. There are no minority reports. Countervailing opinions were freely and fully aired. The issues on which there was some division are reflected in the comments and the roll call votes of Appendix D.

The committee appreciates the public involvement and concern with the rights questions facing it and thanks those who took the time to appear in person or write expressing their opinions on these matters. This testimony and the considered opinion of many delegates was most helpful in drafting this proposal. The committee also wishes to express its thanks to Rick Applegate, research analyst, Darlene Corbin, committee secretary, and George Paul and Michael Larum, student interns.

In presenting this proposed Declaration of Rights, the committee notes that the guidelines and protections for the exercise of liberty in a free society come not from government but from the people who create that government.

It is that spirit which has motivated this committee to insure for Montana's future, through this bill of rights, a more responsible government that is constitutionally commanded never to forget that government is created solely for the welfare of the people so that the people can more fully enjoy the heritage of American liberty within the structure of that government

Bearing this in mind, the committee commends this proposal to the convention with the hope that, whatever the outcome of the convention debates, the citizens of Montana will have a charter of civil liberties adequate

for the foreseeable future. Surely no part of the Constitution being drafted is more important.

Wade J. Danood, Chairman

Chet Blaylock, Vice Chairman

COMMITTEE PROPOSAL

BE IT PROPOSED BY THE BILL OF RIGHTS COMMITTEE:

That there be a new Article on the Bill of Rights to read as follows:

PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

ARTICLE ____

DECLARATION OF RIGHTS

Section 1. POPULAR SOVEREIGNTY. All political power is vested in and derived from the people; all government of right originates with the people; is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. SELF-GOVERNMENT. The people of the state have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish their constitution and form of government whenever they may deem it necessary.

Section 3. INALIENABLE RIGHTS. All persons are born free and have certain inalienable rights which include the right of pursuing life's basic necessities, of enjoying and defending their lives and liberties, of acquiring, possessing and protecting property and of seeking their safety, health and happiness in all lawful

ways. In enjoying these rights, the people recognize corresponding responsibilities.

Section 4. INDIVIDUAL DIGNITY. The dignity of the human being is inviolable. No person shall be denied the equal protection of the law, nor be discriminated against in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas, by any person, firm, corporation, or institution; or by the state, its agencies or subdivisions.

Section 5. FREEDOM OF RELIGION. The state of Montana shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

Section 6. FREEDOM OF ASSEMBLY. The people shall have the right peaceably to assemble, petition for redress or protest governmental action.

Section 7. FREEDOM OF SPEECH, EXPRESSION AND PRESS. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. RIGHT OF PARTICIPATION. The public shall have the right to expect governmental agencies to afford every feasible opportunity for citizen participation in the operation of the government prior to the final decision.

Section 9. RIGHT TO KNOW. No person shall be deprived of the right to examine documents or to observe

the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy exceeds the merits of public disclosure.

Section 10. RIGHT OF PRIVACY. The right of privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. SEARCHES AND SEIZURES. The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures and invasions of privacy, and no warrant to search any place, or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing.

Section 12. RIGHT TO BEAR ARMS. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. RIGHT TO SUFFRAGE. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. ADULT RIGHTS. Persons eighteen (18) years of age are declared to be adults for all purposes and shall have the right to hold any public office in the state.

Section 15. RIGHTS OF PERSONS UNDER THE AGE OF MAJORITY. The rights of persons under the age of majority shall include, but not be limited to, all the fundamental rights of this article except where specifically precluded by laws which enhance the protection for such persons.

Section 16. THE ADMINISTRATION OF JUSTICE. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character; no person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state; and that right and justice shall be administered without sale, denial, or delay.

Section 17. DUE PROCESS OF LAW. No person shall be deprived of life, liberty, or property without due process of law.

Section 18. NON-IMMUNITY FROM SUIT. The state and its subdivisions shall have no special immunity from suit. This provision shall apply only to causes of action arising after June 1, 1973.

Section 19. HABEAS CORPUS. The privilege of the writ of habeas corpus shall never be suspended.

Section 20. INITIATION OF PROCEEDINGS. Criminal offenses of which courts inferior to the district courts have jurisdiction shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted by information, after examination and commitment by a magistrate, or after leave granted by

the court, or shall be prosecuted by indictment without such examination or commitment, or without such leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment. A grand jury shall only be drawn and summoned when the district judge shall, in his discretion, consider it necessary, and shall so order.

Section 21. BAIL. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Section 22. EXCESSIVE SANCTIONS. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. DETENTION. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner prescribed by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence on the trial, if the witness shall be dead or absent from the state.

Section 24. RIGHTS OF THE ACCUSED. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against

him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY. No person shall be compelled to testify against himself in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. TRIAL BY JURY. The right of trial by jury shall be secured to all, and remain inviolate, but in all cases and upon default of appearance, or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. In all civil actions two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all such jury concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. IMPRISONMENT FOR DEBT. No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. RIGHTS OF THE CONVICTED. Laws for the punishment of crime shall be founded on the principles of

prevention and reformation and full rights shall be automatically restored upon termination of state supervision for any offense against the state.

Section 29. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner is the prevailing party.

Section 30. TREASON AND DESCENT OF ESTATES. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislative assembly; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. EX POST FACTO, OBLIGATION OF CONTRACTS AND IRREVOCABLE PRIVILEGES. No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislative assembly.

Section 32. CIVILIAN CONTROL OF THE MILITARY. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

Section 33. IMPORTATION OF ARMED PERSONS. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislative assembly, or of the governor when the legislative assembly cannot be convened.

Section 34. UNENUMERATED RIGHTS. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Wade J. Dahood, Chairman

Chet Blaylock, Vice Chairman

Bob Campbell | Dorothy Eck | Donald R. Foster

R. S. Hanson | George James | Rachell Mansfield

Lyle Monroe | Marshall Murray | Veronica Sullivan

COMMENTS ON COMMITTEE PROPOSAL

PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

COMMENTS

The Bill of Rights Committee felt that Montana is unique both in the beauty of the state and the strength of the individuals who were dedicated to establishing a state from a rich wilderness.

The paintings of Charles M. Russell captured the rugged individualism which was surrounded by unmatched scenery. This was described by John Steinbeck as the "grandeur" of the mountains in western Montana and "rolling grasslands" of eastern Montana. Grandeur was included in the Preamble, but the majority of the Committee preferred the term "vastness of our rolling plains" to "richness of our rolling grasslands".

The "quiet beauty of our state" includes considerations of the land, air, and water of our state and describes the peacefulness that the people have always desired since the early inhabitants first shared a special relationship with the spirit of their Creator.

Because of the concern of those in the convention and the state that not mentioning "God" specifically would be unacceptable the committee voted unanimously to retain Him in the Preamble. Although the Committee preferred the term "Spirit of Creation" or "Spirit of our Creator", it did not believe the emotional response raised would justify the change.

The final two phrases represent the reason for living under a constitutional government which is intented improve the quality of life and equality of opportunity. The Committee urges that each individual should be given the same opportunity to develop to his full potential.

We believe this Preamble represents the essence of what we in Montana cherish in our surroundings and our highest ideals of improving the quality of our lives in a free society.

In drafting this Preamble; the Committee used delegate proposals no's.59, 67, 86, and 118.

ARTICLE _____

DECLARATION OF RIGHTS

Section 1. POPULAR SOVEREIGNTY. All political power is vested in and derived from the people; all government of right originates with the people; is founded upon their will only, and is instituted solely for the good of the whole.

COMMENTS

After some discussion, the Committee decided unanimously to leave this statement of political philosophy as it was in the 1889 Constitution. Several re-drafts were attempted with unsatisfactory results. Although these re-drafts would have shortened the provision somewhat, it was suggested that they would leave out important concepts of political philosophy. As it stands, this section contains the notion of popular sovereignty, announces that legitimate government is founded on the will of the people and provides that the sole end of government is the good of the whole.

The Committee understands that this and other political

philosophy provisions are not often immediately justiciable, yet believes that such provisions announce the principles upon which legitimate government rests thereby providing yardsticks for assessing the quality of governmental operation.

No delegate proposals were submitted on this provision.

Section 2. SELF-GOVERNMENT. The people of the state have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish their constitution and form of government whenever they may deem it necessary.

COMMENTS

The Committee decided with one dissenting vote that this section might be re-drafted to make it more readable without changing its essence. Accordingly, wordings which were believed redundant or excessive were deleted and complete sentence structure was employed where necessary. These revisions considerably shorten the provision without changing its meaning or intent. The principle as submitted states the right of Montanans to govern themselves and to alter or abolish their constitution and form of government. No delegate proposals were submitted on this provision.

Section 3. INALIENABLE RIGHTS. All persons are born free and have certain inalienable rights which include the right of pursuing life's basic necessities, of enjoying and defending their lives and liberties, of acquiring, possessing and protecting property and of seeking their safety, health and happiness in all lawful ways. In enjoying these rights, the people recognize corresponding responsibilities.

COMMENTS

The Committee proposes with two dissenting votes that the former Article III, Section 3 be retained with a few substantive changes. The Committee struck language which was felt to be redundant. In addition, it is recommended that the right to pursue life's basic necessities be incorporated as a statement of principle. The intent of the Committee on this point is not to create a substantive right for all for the necessities of life to be provided by the public treasury.

The Committee heard considerable testimony, from low income and social services people alike, that the state's current public assistance programs are not meeting the genuine needs of low income people who, because of circumstances beyond their control, are unable to obtain basic necessities. Accordingly, it is hoped that the legislature will have occasion to review these programs and upgrade them where necessary to provide full necessities to those in genuine need and to curb whatever abuses may exist in the programs.

What was attempted in this part of the proposed section was a statement of the principle that all persons have the inalienable right to pursue the basic necessities of life---that there can be no right to life apart from the possibility of existence.

The other inalienable rights were included with only minor changes in style for purposes of clarity. An additional right, the right of seeking health was incorporated in recognition of the fact that a right to life without health is a sorry proposition.

The final sentence of this section is new having been derived from delegate proposal no. 116. Testimony was received

both favoring and opposing the inclusion of a statement of corresponding responsibilities in the declaration of rights. Some expressed the feeling that many were accepting rights without recognizing that they create obligations. Others were adamant that a declaration of rights should contain just that: the rights of persons against governmental abuses and the rights of minorities against the power of unchecked majorities. The Committee felt that the inclusion of such a statement does not infringe or impair the rights granted in the declaration of rights but only accords a tone of responsibility to their exercise.

A number of delegate proposals were rejected in the drafting of this section. Delegate proposal no. 45 stipulated a substantive right to the necessities of life. No. 93 proposed an inalienable right to collectively bargain. The Committee felt that the issue of collective bargaining--as well as its counterpart the right to work--were properly statutory matters.

Section 4. INDIVIDUAL DIGNITY. The dignity of the human being is inviolable. No person shall be denied the equal protection of the law, nor be discriminated against in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas, by any person, firm, corporation, or institution; or by the state, its agencies or subdivisions.

COMMENTS

The Committee unanimously adopted this section with the intent of providing a constitutional impetus for the eradication of public and private discriminations based on race, color, sex, culture, social origin or condition, or political or religious ideas. The provision, quite similar to that of the

Puerto Rico declaration of rights is aimed at prohibiting private as well as public discriminations in civil and political rights.

Considerable testimony was heard concerning the need to include sex in any equal protection or freedom from discrimination provisions. The Committee felt that such inclusion was eminently proper and saw no reason for the state to wait for the adoption of the federal Equal Rights Amendment, an amendment which would not explicitly provide as much protection as this provision.

The word culture was incorporated specifically to cover groups whose cultural base is distinct from mainstream Montana, especially the American Indians. "Social origin or condition" was included to cover discriminations based on status of income and standard of living.

Some fears were expressed that the wording "political or religious ideas" would permit persons who supported right to work in principle to avoid union membership. Such is certainly not the intent of the Committee. The wording was incorporated to prohibit public and private concerns discriminating against persons because of their political or religious beliefs.

The wording of this section was derived almost verbatim from delegate proposal no. 61. The Committee felt that this proposal incorporated all the features of all the delegate proposals (no.'s 10, 32, 50 and 51) on the subjects of equal protection of the laws and the freedom from discrimination. The Committee is well-aware that any broad proposal on these subjects will require considerable statutory embellishment. It is hoped that the legislature will enact statutes to

promote effective eradication of the discriminations prohibited by this section. The considerable support for and lack of opposition to this provision indicates its import and advisability.

Section 5. FREEDOM OF RELIGION. The state of Montana shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

COMMENTS

The Committee decided unanimously to substitute the concise wording of the freedom of religion clause of the federal First Amendment. Much testimony was heard on this provision, most of it on the subject of public aid to church-related schools. The Committee felt that this issue should be dealt with, as it was, by the Education and Public Lands Committee and that the provision incorporated into the Declaration of Rights should restrict itself to guaranteeing the free exercise of religion and prohibiting the establishment of any religion.

The Committee felt especially strong about removing the anti-Mormon biases reflected in the previous wording of Article III, Section 4. Beyond that, the Committee noted that since the religions which historically were persecuted were those alleged to violate or threaten the good order, peace and safety of the state, such passages were of dubious merit in a statement of religious liberty. Accordingly, both--of considerable length--were deleted. What remains is the tradition-ridden guarantee of religious liberty adopted by the first US Congress in 1789 as part of the federal Bill of Rights.

Realizing the legal, social and political problems of the church-state area are exceedingly complex, it is not

urged that this provision will simplify their resolution. However, it will certainly not make the understanding of these compelling and sometimes paradoxical concerns more difficult.

Section 6. FREEDOM OF ASSEMBLY. The people shall have the right peaceably to assemble, petition for redress or to protest governmental action.

COMMENTS

The Committee unanimously recommended that the former Article III, Section 26 be adopted with only one stylistic change. The basic right to assemble for redress of grievances by petition or remonstrance remains unchanged. The wording was tightened up a little and the phrase "protest governmental action" was substituted for the phrasing "apply to those invested with the powers of government for redress of grievances.. by remonstrance." In doing so, the Committee notes the paramount position of the right and the invaluable function its responsible exercise plays in a democratic society.

Section 7. FREEDOM OF SPEECH, EXPRESSION AND PRESS. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

COMMENTS

The Committee unanimously proposes the adoption of former Article III, Section 10 with one substantive change. The freedom of speech is extended, in line with federal decisions under the First Amendment, to cover the freedom of

expression. Hopefully, this extension will provide impetus to the courts in Montana to rule on various forms of expression similar to the spoken word and the ways in which one expresses his unique personality in an effort to re-balance the general backseat status of states in the safeguarding of civil liberties. The Committee wishes to stress the primacy of these guarantees in the hope that their enforcement will not continue merely in the wake of the federal case law.

Other minor changes made in the section were merely stylistic in nature except for the inclusion of the word "slander" to provide protection against abuses of the free speech and press guarantees in cases of spoken as well as written word. The Committee retained the established principle that in libel trials the jury shall decide the law and the facts on the theory that removal of this clause might be construed as the denial of a right. The principle is continued with the note that in cases of libel it is necessary for the prosecutor to convince both the court and the jury before the free speech and press protections are overridden (Harrington v. Butte Miners Co. Et. Al., 48 Mont. 550, 554, 139 p. 451).

Section 8. RIGHT OF PARTICIPATION. The public shall have the right to expect governmental agencies to afford every feasible opportunity for citizen participation in the operation of the government prior to the final decision.

COMMENTS

The Committee unanimously adopted this section in response to the increased public concern and literature about citizen participation in the decision-making processes of government. The provision is in part a constitutional sermon designed to

serve notice to agencies of government that the citizens of the state will expect to participate in agency decisions prior to the time the agency makes up its mind. In part, it is also a commitment at the level of fundamental law to seek structures, rules and procedures that maximize the access of citizens to the decision-making institutions of state government. The Committee believes that this is eminently proper and that it will have a salutary effect not only on the quality of the final decisions, but more important, on the deliberative and political capabilities of the citizenry. It is hoped that this provision will play a role in reversing the dissatisfactions increasingly expressed regarding bureaucratic authority insulated from public scrutiny and participation. The wording of the provision is derived from delegate proposal no. 38.

Section 9. RIGHT TO KNOW. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demands of individual privacy exceeds the merits of public disclosure.

COMMENTS

The Committee, with two dissenting votes, and after considerable reflection, adopted this provision explicitly establishing a public right to know. In the main, the provision is from delegate proposal no. 57. It is a companion to the preceding right of participation. Both arise out of the increasing concern of citizens and commentators alike that government's sheer bigness threatens the effective exercise of citizenship. The Committee notes this concern and believes

that one step which can be taken to change this situation is to constitutionally presume the openness of government documents and operations. The provision stipulates that persons have the rights to examine governmental documents and the deliberations of all public bodies or agencies except to the extent that the demands of individual privacy outweigh the needs of the public right of disclosure. The provision applies to state government and its subdivisions. The Committee intends by this provision that the deliberation and resolution of all public matters must be subject to public scrutiny. It is urged that this is especially the case in a democratic society wherein the resolution of increasingly complex questions leads to the establishment of a complex and bureaucratic system of administrative agencies. The test of a democratic society is to establish full citizen access in the face of this challenge.

The Committee approvingly cites Section 82-3401 of the Revised Codes of Montana, 1947, which provides: "It is the intent of this act (the open meeting law) that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them..."

The Committee, during its deliberations on this provision, struck the word "public" from the phrase "to examine (public) documents." This was done to avoid tying the viability of this provision to the 1895 legislative efforts to define public and private writings. Sections 2 and 3 of Title 93, Chapter 1001 of the Revised Codes of Montana, 1947, define these two classes of writings. Broad categories of what constitute public writings are stipulated in Section 2. Section 3 proclaims that

all other writings are private. The Committee admits that this list of public writings is admirably broad; however, using this type of statutory construction is dangerous when one is attempting to establish a public right to know. Judging from the example of federal and state statutes on the matter, it is better to stipulate the exclusions rather than the inclusions. To do otherwise is to risk losing the right to examine a document because it does not fit statutory categories as a public document.

The Committee intends by this provision that the right to know not be absolute. The right of individual privacy is to be fully respected in any statutory embellishment of the provision as well as in the court decisions that will interpret it. To the extent that a violation of individual privacy outweighs the public right to know, the right to know does not apply. To clearly establish this point, the Committee stipulated in the provision that the right to know is subject to the demands of individual privacy.

The Committee commends this provision to the Convention as a long step forward in assuring the openness in government. By creating an atmosphere of openness in government, the Committee believes that confidence in government will increase and governmental operation will be facilitated. Such a provision, far from limiting the effectiveness of governmental operation, establishes the prerequisite to the effective exercise of citizenship in a democratic society.

Section 10. RIGHT OF PRIVACY. The right of privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

COMMENTS

The Committee unanimously adopted this section--similar to delegate proposal no. 33--in order to guarantee the right of privacy. What it accomplishes is the elevation of the judicially-announced right of privacy to explicit constitutional status. The right has been guaranteed in case law at the federal level [Griswold v. Connecticut, 381 U. S. 479 (1965)] and in Montana [State v. Brecht, 28 St. Rep. 468, 473 (May, 1971)]. The Committee believes the Constitution should specify that the only circumstance in which the right of privacy may be infringed is following the showing of a compelling state interest. This is in response to the increasing concern expressed nationwide that the sphere of individual privacy is in danger of eclipse in an advanced technological society. The point of this provision is not to prohibit all invasions of privacy but to require that no invasion of privacy should occur until and unless a compelling state interest has been established.

The Committee proposed a broad provision in this area to permit flexibility to the courts in resolving the tensions between public interests and privacy. It is hoped that the legislature will have occasion to provide additional protections for the right of privacy in explicit areas where safeguards are required. An example of a potential legislative subject matter can be seen in delegate proposal no. 124 which prohibited requiring submission to a lie detector or similar test as a condition of employment.

Section 11. SEARCHES AND SEIZURES. The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures and invasions of privacy, and no warrant to search any place, or seize any person or thing

shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing.

COMMENTS

The Committee unanimously recommends the adoption of Article III, Section 7 with only one substantive change. The phrase "invasions of privacy" was included to apply the traditional safeguards accompanying searches and seizures to any invasions of privacy. This section is the procedural companion of substantive Section 10 of this final draft. They stipulate that even after the showing of a compelling state interest the state must abide by certain procedural guidelines.

The Committee had incorporated into the tentative rough draft safeguards for wiretapping, electronic surveillance and other means of communications interceptions. After hearing further testimony, the Committee decided to delete any reference to interceptions of communications. The Committee does not wish to authorize, explicitly or implicitly, the interception of communications by state officials. The Committee notes that no testimony was offered alleging any need for wiretap authority at the state level; nor were there any crimes stipulated which would justify an explicit or implicit grant of such authority to any state official. In addition, it is noted that federal officials already have the authority to wiretap for a number of serious offenses. Accordingly, the Committee believes that the privacy of communications should remain inviolate "from state-level interception."

The Committee is aware that the legislature is empowered by the federal Omnibus Crime Control and Safe Streets Act of 1968 to grant wiretap authority to state officials. It is

noted that any such legislative enactment would require, under this and the preceding proposed provision, the showing of a compelling state interest. The Committee, seeing the immediate potential abuses of wiretap authority at the state level, believes this is only proper.

Delegate proposal no. 14 was rejected in part as an implicit grant of communications interceptions authority.

Section 12. RIGHT TO BEAR ARMS. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

COMMENTS

The Committee voted unanimously that the Montana provision guaranteeing the right to keep and bear arms remain as is. In doing so, it is noted that the Montana provision goes beyond the federal Second Amendment in that it guarantees an <u>individual</u> right to keep and bear arms. From some of the testimony received, it was apparent that many were unaware that the federal Constitution stipulates only a <u>collective</u> right to keep and bear arms, and explicitly predicates that right on the maintenance of a well-regulated military.

Testimony was heard in favor of guaranteeing the right to possess and bear arms without registration, license, or tax. The Committee notes that the statutory efforts to regulate the possession of firearms have been at the federal level and are, therefore, not subject to state constitutional provisions. In addition, it is urged--and requires no citation--that the right to bear arms is subject to the police power of

the state. Any such regulation must, of course, stand in some relation to the public good and must not violate due process or equal protection of the laws.

Delegate proposal no. 4 was rejected as a lengthy provision that would have frozen into the Constitution without any state precedent a good number of matters best dealt with at the more flexible statutory level. As proposed, the Montana provision on the right to keep and bear arms remains one of the very strongest in the nation.

Section 13. RIGHT TO SUFFRAGE. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

COMMENTS

The Committee felt that this section should be left as is, a guarantee that the right of suffrage shall not be interfered with and that elections shall be free and open. Accordingly the provision as proposed is the verbatim wording of Article III, Section 5 of the present Montana constitution. The provision is supplemented, but not replaced by, the proposals of the General Government Committee on suffrage and elections. No delegate proposals were received on this provision.

Section 14. ADULT RIGHTS. Persons eighteen (18) years of age are declared to be adults for all purposes and shall have the right to hold any public office in the state.

COMMENTS

The Committee approved, with one dissenting vote, this new provision which would declare eighteen years olds to be adults for all purposes. The provision further stipulates that eighteen year olds shall have the right to hold any public office in the

state. The Committee believes that the admirable steps taken by the federal government in adopting the Twenty-Sixth Amendment and by the Montana legislature in ratifying it should be extended to their logical conclusion. What the section provides is that all adults can vote and that any person eligible to vote is of sufficient age to seek election to any public office. The Committee is well-aware that there will probably be few eighteen years olds running for the major offices of state government. Still, it is urged that should an eighteen year old be of the inclination and capability to run for such office, he ought not to be obstructed from presenting himself before the electorate as a candidate; and, if he can secure the votes necessary for election, he ought not to be denied the office because of his age. The point of the provision is that the electorate can and should be able to choose to elect any adult it wishes, regardless of his age. Certainly, if the electorate would support an adult of eighteen years for an office, an arbitrary age requirement such as the constitution and statutes contain, should not deny him the office.

The Committee commends this provision to the convention as the extension of full rights of participation in public affairs to all adults. This provision was introduced as delegate proposal no. 13.

Section 15. RIGHTS OF PERSONS UNDER THE AGE OF MAJORITY. The rights of persons under the age of majority shall include, but not be limited to, all the fundamental rights of this article except where specifically precluded by laws which enhance the protection for such persons.

COMMENTS

The Committee adopted, with one dissenting vote, this

statement explicitly recognizing that persons under the age of majority have all the fundamental rights of the Declaration of Rights. The only exceptions permitted to this recognition are in cases in which rights are infringed by laws designed and operating to enhance the protection for such persons. The Committee took this action in recognition of the fact that young people have not been held to possess basic civil rights. Although it has been held that they are 'persons' under the due process clause of the Fourteenth Amendment, the Supreme Court has not ruled in their favor under the equal protection clause of that same amendment. What this means is that persons under the age of majority have been accorded certain specific rights which are felt to be a part of due process. However, the broad outline of the kinds of rights young people possess does not yet exist. This is the crux of the committee proposal: to recognize that persons under the age of majority have the same protections from governmental and majoritarian abuses as do adults. In such cases where the protection of the special status of minors demands it, exceptions can be made on clear showing that such protection is being enhanced.

This provision was taken, in part, from delegate proposals no's. 65 and 88.

Section 16. THE ADMINISTRATION OF JUSTICE. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character; no person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides

coverage under the Workmen's Compensation Laws of this state; and that right and justice shall be administered without sale, denial, or delay.

COMMENTS

The Committee voted unanimously to retain this section with one addition. The provision as it stands in the present constitution guarantees justice and a speedy remedy for all without sale, denial or delay. The Committee felt, in light of a recent interpretation of the Workmen's Compensation Law, that this remedy needed to be explicitly guaranteed to persons who may be employed by one covered by Workmen's Compensation to work on the facilities of another. Under Montana law, as announced in the recent decision of Ashcraft v. Montana Power Co., the employee has no redress against third parties for injuries caused by them if his immediate employer is covered under the Workmen's Compensation Law. The Committee feels that this violates the spirit of the guarantee of a speedy remedy for all injuries of person, property or character. It is this specific denial--and this one only--that the Committee intends to alter with the following additional wording: "no person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state." In other words the Committee wants to insure that the Workmen's Compensation Laws of the state will be used for their original purpose--to provide compensation to injured workmen--rather than to deprive an injured worker of redress against negligent third parties (beyond

his employer and fellow employees) because his immediate employer is covered by Workmen's Compensation. The Committee believes that clarifying this remedy would have a salutary effect on the conscientiousness of persons who may contract out work to be done on their premises. To permit no remedy against third parties in cases where the employer is covered by Workmen's Compensation is to encourage persons with run-down premises to contract out work without improving the quality of the premises. The Committee urges that this is an abuse of the Workmen's Compensation Law and constitutes a mis-application of that law to protect persons who are negligent.

The Committee commends this provision to the convention with the belief that it is an important, if technical, aspect of the administration of justice.

Section 17. DUE PROCESS OF LAW. No person shall be deprived of life, liberty, or property without due process of law.

COMMENTS

The Committee felt that the tradition-ridden phrasing of the due process of law clause should remain as is. Accordingly, the wording of Article III, Section 27 is incorporated verbatim in this proposal. The Committee received no suggestion for change of this section.

Section 18. NON-IMMUNITY FROM SUIT. The state and its subdivisions shall have no special immunity from suit. This provision shall apply only to causes of action arising after June 1, 1973.

COMMENTS

The Committee voted unanimously to adopt this section

abolishing the archaic doctrine of sovereign immunity. In doing so, the committee responds to increasing citizen concern and the writing of legal scholars to the effect that the doctrine no longer has a rational justification in law. The committee notes that a clear trend has emerged nationwide to abolish the doctrine. The appellate courts of sixteen states have abolished the doctrine--a clear indication that they can no longer find a justification for its continued operation.

Briefly, the doctrine of sovereign immunity bars tort suits against the state for negligent acts by its officials and employees. The committee finds this reasoning repugnant to the fundamental premise of the American justice: all parties should receive fair and just redress whether the injuring party is a private citizen or a governmental agency. The committee believes that just as the government administers a system of justice between private parties it should administer the system when the government itself is alleged to have committed an injustice. The Committee notes that private firms are liable for the negligence of their employees and points out this fact to indicate the inconsistency of the state's position in the system of tort law. It is the belief of the committee that this proposed provision rectifies this inconsistency.

The committee cites with approval the recent Colorado decision in which that state's highest court abolished the doctrine. In responding to the old justification for sovereign immunity--that "the King can do no wrong"--the court said: "The monarchical philosophies invented to solve the marital problems of Henry VIII are not sufficient justification for the

denial of the right of recovery against the government in today's society. Assuming that there was sovereign immunity of the Kings of England, our forebears won the Revolutionary War to rid themselves of such sovereign prerogative." (Evans v. Board of County Commissioners, (Colo., 482 P2d 968,969 (1971); See also companion cases against the state and a school district.)

Under current Montana law, governmental agencies are liable only to the extent of the insurance coverage they carry. This leaves the decision as to the amount of coverage to be purchased with the agency. What this means is that an agency can effectively limit the actions brought against it. The committee feels that this is entirely too discretionary a situation when individual rights are at stake. Since adequate insurance can be obtained and can be budgeted in advance, agencies should have such coverage. This will insure that they are able to pay the justified claims made against them and that such claims will not be limited by inadequate insurance coverage.

The committee is well-aware that implementation of this provision could cause some difficulties if done without permitting affected agencies to upgrade their currently inadequate coverage. Accordingly, it is recommended that this provision not be retrospective in its application; that, in order to permit agencies time to obtain adequate insurance coverage as provided by legislative appropriation, it shall not be effective until June 1, 1973; and that it shall be effective only to causes of action arising after that date. The committee commends this provision to the convention with the belief that its adoption will insure that redress for wrongs will be administered on behalf of and against all parties, governmental as well as private. The wording of the provision is similar in purpose to delegate proposal 30.

Section 19. HABEAS CORPUS. The privilege of the writ of habeas corpus shall never be suspended.

COMMENTS

The Committee believes that this most basic of procedural rights requires complete protection. Accordingly, the proposal provides that the writ of habeas corpus--the right to test the legitimacy of one's detention--ought never to be suspended. The Committee is aware that a serious rebellion or invasion could lead to a federal suspension of the writ. However, it is urged that the state of Montana should not suspend the writ at the state level without a problem of such magnitude as to require federal action. It seems plain that the federal government could be counted upon to assist in keeping the state courts open to review any habeas corpus petitions submitted even in a statewide emergency.

The Committee notes that nine states have similar provisions that guarantee that the writ shall never be suspended. The importance of the writ can be seen in Montana history. In 1914, when the Governor proclaimed a state of insurrection in Silver Bow County, the military closed down the courts in that county and arrested persons without warrant or charge, held them without bail to be tried without a jury before a military tribunal. Some of those detained used the writ of habeas corpus to good effect, securing an order that the military re-open the courts in Silver Bow County. (In re Mc Donald, 49 Montana 454, 143 P. 947 (1914)). The Committee cites this as an example of the value of this important procedural safeguard precisely in times of stress.

Section 20. INITIATION OF PROCEEDINGS. Criminal offenses of which courts inferior to the district courts have jurisdiction shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted by information, after examination and commitment by a magistrate, or after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment, or without such leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment. A grand jury shall only be drawn and summoned when the district judge shall, in his discretion, consider it necessary, and shall so order.

COMMENTS

The Committee voted unanimously that this section which stipulates the method of initiating criminal proceedings should remain as is with one minor change. The phrase "justice's courts and municipal and other courts" was deleted as unnecessary and redundant wording. The remainder of the section is the verbatim rendering of the Article III, Section 8 providing for prosecutions by complaint, information and indictment. It is noted that these fixed aspects of the initiation of proceedings are part of the basic procedural rights framework established to maintain the accusatorial nature of the system of criminal justice. No delegate proposals were received on this provision.

Section 21. BAIL. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

COMMENTS

The Committee voted unanimously to retain this section unchanged. As it stands, the section announces that all persons are bailable except in certain capital offenses. No delegate proposals were received on this provision.

Section 22. EXCESSIVE SANCTIONS. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

COMMENTS

The Committee voted unanimously that this section be retained unchanged. It is thought that the section provides the judiciary and the legislature adequate flexibility to apply the principle that there shall not be excessive bail, excessive fines or cruel and unusual punishments. No delegate proposals were received on this provision.

Section 23. DETENTION. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner prescribed by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence on the trial, if the witness shall be dead or absent from the state.

COMMENTS

The Committee voted unanimously to retain the former Article III, Section 17 unchanged. The provision prohibits

unreasonable detention of witnesses and prescribes in detail the procedure for securing testimony in the event the witness can not be procured for the trial. No delegate proposals were received on this provision.

Section 24. RIGHTS OF THE ACCUSED. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

COMMENTS

The committee voted unanimously to retain the former Article III, Section 16 unchanged. The committee felt it was an admirable statement of the fundamental procedural rights of an accused. No delegate proposals were received on this provision.

Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY. No person shall be compelled to testify against himself in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense previously tried in any jurisdiction.

COMMENTS

The committee recommends the adoption of the former Article III, Section 18 with one substantive change. It is noted that the "two sovereignties rule" is still in effect at the federal level. In recent years, the rule

which permits prosecutions by different jurisdictions for the same offense arising from the same set of criminal facts, has come under scrutiny and criticism. The provision recommended by this committee would prohibit the state from following the prosecution of another jurisdiction for the same offense and criminal facts. The committee is well-aware that the state constitution cannot limit the federal government in this practice. However, as the committee believes that subsequent prosecutions as those described above are a violation of the protection against double jeopardy, it is hoped that the federal government and the state can cooperate in cases involving violations of the laws of both jurisdictions. In this way, a person accused of a crime will be placed in jeopardy only once in accordance with long-established principles.

Delegate proposals #'s 88 and 124 were rejected. It was felt that #88, which extended the self-incrimination prohibition to any kind of evidence, was unworkable and might indirectly invalidate the implied consent law. Proposal #124 prohibited lie detector and other self-incriminating tests for employment. The committee felt that the particulars of this proposal were properly statutory matters and, along with a host of other privacy matters should be dealt with by the legislature. It was also felt that the complementary protection of the right of privacy in section 10 of this proposal would offer protection against privacy invasions made as a condition of employment.

Section 26. TRIAL BY JURY. The right of trial by jury shall be secured to all, and remain inviolate, but

in all cases and upon default of appearance, or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. In all civil actions two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all such jury concurred therein. In all criminal actions, the verdict shall be unanimous.

COMMENTS

The committee voted unanimously to make some changes in the section on trial by jury. The first of these permits the defendant to waive a jury trial in felony cases as well as civil and misdemeanor cases. The committee felt that expanding the choice of a defendant to waive a jury trial to include felony cases, the defendant could decide with the aid of his attorney whether to try his case before a jury or the judge sitting alone. The defendant may well desire to eliminate the time incarcerated while waiting for the next jury term or may feel in certain instances that his chances of fairly presenting his case are better without a jury.

The committee also felt that it was essential to strengthen the presumption of innocence in all criminal actions by requiring a unanimous verdict for misdemeanors as well as felonies. It is urged by the committee that since guilt must be clearly established in all criminal cases, there should be no distinction between the number of jurors in agreement required to convict of a misdemeanor or a felony. If guilt is clearly established, it is

believed that the jury will be able to agree to convict. If guilt is not established, and several jurors cannot agree, it is a long established principle of justice that the accused ought not to be convicted. The loss of livelihood and lifetime criminal record occasioned by a criminal conviction are too damaging to permit less than a unanimous verdict.

The remainder of the section is proposed without change.

Section 27. IMPRISONMENT FOR DEBT. No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

COMMENTS

The committee voted unanimously to retain former Article III, Section 12 unchanged. It was felt that the provision is an adequate safeguard for the right of one in debt to be free from imprisonment. No delegate proposals were received on this provision

Section 28. RIGHTS OF THE CONVICTED. Laws for the punishment of crime shall be founded on the principles of prevention and reformation and full rights shall be automatically restored upon termination of state supervision for any offense against the state.

COMMENTS

The committee voted unanimously to adopt this revision of former Article III, Section 24. In doing so, the committee recommends that once a person who has been convicted has served his sentence and is no longer under

state supervision, he should be entitled to the restoration of all civil and political rights, including the right to vote, hold public office, and enter occupations which require state licensing. The committee believes that this is eminently proper and that the paramount concerns of prevention and reformation cannot be realized unless the ex-convict can readily move back into society as an equal participant in community affairs. Surely to rehabilitate one and attempt to insure that he has the opportunity to become a full member of the community requires that he be restored the same rights, privileges and immunities as other citizens. This provision does not speak to the rights of the incarcerated while they are in prison as did delegate proposal #98. It is not meant in any way to preclude them having all rights except those necessarily denied as a condition of their incarceration.

The committee also deleted reference to capital punishment. The reference to capital punishment is not necessary as it merely grants the legislature the power to do something it can do anyway. To delete this reference has no effect on the status of capital punishment in Montana; it remains in effect in those instances which the legislature provides. The committee rejected delegate proposal #3 which would have abolished capital punishment. The committee felt the matter should be left up to the legislature.

Section 29. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the

event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner is the prevailing party.

COMMENTS

The committee unanimously approved substantive changes in the eminent domain section. The thrust of the committee effort was to assure that full and just compensation be made in all eminent domain actions. Without it, some of the costs of an eminent domain action fall where they do not belong--on the person whose property is being condemned.

In order to give substance to the citizen's effort to challenge the compensation figure of the condemnor, the last sentence of this provision was added. Those testifying in opposition to the committee's original eminent domain proposal agreed that this sentence, which awards necessary expenses of litigation to the private property owner when he is the prevailing party, is just. The committee intends by necessary expenses of litigation all costs including appraiser fees, attorney fees and court costs. It is felt that this stipulation will produce a climate in which the condemnor's offer for compensation will more adequately reflect the compensation to which a property owner is entitled. The property owner will have a chance to collect the expenses he incurs in challenging the condemnor's decision. In addition, it will redress the imbalance between the vast resources brought to bear by the state and those available to the individual property owner in contested cases. The committee recommends this section to the convention as

insurance that the compensation to the private property owner will in fact be just. Delegate proposal #75 was amended to accomplish this provision.

Section 30. TREASON AND DESCENT OF ESTATES. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislative assembly; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

COMMENTS

The committee voted unanimously to retain the former Article III, Section 9 with minor stylistic changes. The limitations on treason prosecutions were retained in their tradition-rooted language verbatim. The provision on "corruption of blood" was replaced with wording expressing the same point: "no conviction shall cause the loss of property to the relatives or heirs of the convicted". The provision on the descent of the estates of suicides was revised for clarity. No delegate proposals were received on this provision.

Section 31. EX POST FACTO, OBLIGATION OF CONTRACTS AND IRREVOCABLE PRIVILEGES. No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislative assembly.

COMMENTS

The committee voted unanimously to retain the former Article III, Section 11 unchanged. The protections against ex post facto laws, laws impairing the obligation of contracts and laws granting irrevocable privileges seemed adequate. No delegate proposals were received on this provision.

Section 32. CIVILIAN CONTROL OF THE MILITARY. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

COMMENTS

The committee voted unanimously to retain the former Article III, Section 22 unchanged. In doing so, the committee notes the importance of the declaration of the principle that the civilian authority always supersedes that of the military. Although the quartering of troops prohibition has not been at issue for many years, the committee felt it was wise to retain the safeguard. No delegate proposals were received on this provision.

Section 33. IMPORTATION OF ARMED PERSONS. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the supression of domestic violence, except upon the application of the legislative assembly, or of the governor when the legislative assembly cannot be convened.

COMMENTS

The committee voted unanimously that the former

Article III, Section 31 remain unchanged. The protection, initially established to prevent the importation of strike-breakers, is thought to be an adequate safeguard against any body of armed men coming into the state. No delegate proposals were received on this provision.

Section 34. UNENUMERATED RIGHTS. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

COMMENTS

The committee voted unanimously to retain the former Article III, Section 30 unchanged. In doing so, the committee notes that this provision--as well as the new rights provisions of this proposal--is a crucial part of any effort to revitalize the state government's approach to civil liberties questions. Activity in recent years indicates that this provision, originally written into the federal Bill of Rights as a sign that there were rights beyond those specifically listed, may be the source of innovative judicial activity in the civil liberties field. [See, e.g. Griswold v. Connecticut, 381 U.S. 479(1965)]. No delegate proposals were received on this provision.

APPENDIX A

CROSS REFERENCES

Proposed Section	Present Article & Section
1	1
2	2
3	3
4	NEW
5	4
6	26
7	10
8	NEW
9	NEW
10	NEW
11	7
12	13
13	5
14	NEW
15	NEW
16	6
17	27
18	NEW
19	21
20	8
21	19
22	20
23	17
24	16
25	18
26	23
27	12
28	24
29	14
30	9
31	11
32	22
33	31
34	30

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Bill of Rights Committee during its deliberations:

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
1.	#1	E.M.Berthelson	Environment	Rejected
2.	#3	Jerome Cate	Capital punishment	Rejected
3.	#4	E.M.Berthelson	Right to Bear arms	Rejected
4.	#10	Virginia Blend	Equal Rights	Rejected
5.	#12	Jerome Cate	Environmental protection	To Natural Resources
6.	#13	Bob Campbell	Rights of 18 year olds	Adopted
7.	#14	Bob Campbell	Invasions of privacy	Adopted in part
8.	#15	D.A.Scanlin	Indian lands	Adopted
9.	#18	Jerome Cate	Right to Counsel	Rejected
10.	#20	C.B.McNeil	Quality Environment	To Natural Resources
11.	#21	C.B.McNeil	Quality Environment	To Natural Resources
12.	#30	Jerome Cate	Sovereign immunity	Adopted in part

13.	#32	Mae Nan Robinson	Discrimination	Rejected
14.	#33	Bob Campbell	Individual dignity	Adopted
15.	#34	Bob Campbell	Restoration of rights	Adopted
16.	#38	Donald Foster	Citizen participation	Adopted
17.	#45	Lyle Monroe	Basic necessities	Adopted in part
18.	#50	Bob Campbell	Equal protection	Rejected
19.	#51	Bob Campbell	Discrimination	Rejected
20.	#55	Jerome Cate	Compensation for victims of crime	Rejected
21.	#57	Dorothy Eck	Rights of Access	Adopted
22.	#59	Bob Campbell	Preamble	Adopted in part
23.	#61	Richard J. Champoux	Equal protection	Adopted in part
24.	#65	Lyle Monroe	Rights of minors	Adopted in part
25.	#67	Donald Foster	Preamble	Adopted in part
26.	#75	Bob Campbell	Eminent domain	Adopted in part
27.	#81	Daniel W. Harrington	Religious liberty	Rejected
28.	#86	George W. Rollins	Preamble	Rejected
29.	#87	Donald Foster	Rights of minors	Rejected
30.	#88	Jerome Cate	Self-incrimination	Rejected
31.	#93	Henry Siderius	Collective bargaining	Rejected

32.	#98	Robert Lee Kelleher	Rights of prisoners	Rejected
33.	#100	Robert Lee Kelleher	Involuntary servitude on Sundays	Rejected
34.	#103	Robert Lee Kelleher	Rights to be born and to die	Rejected
35.	#116	Jack K. Ward	People's obligation to preserve rights	Adopted in part
36.	#118	Jack K. Ward	Preamble	Rejected
37.	#124	Jerome Cate	Prohibition of lie detector tests	Rejected
38.	#125	Jerome Cate	Environmental compensation	Rejected
39.	#132	Bob Campbell	Environmental rights	Adopted
40.	#133	Bob Campbell	Permitting full remedies, etc.	Adopted
41.	#151	Lyle Monroe	Rights of Indians	Rejected
42.	#153	David L. Holland	Free care at St. Institutions	Rejected
43.	#160	Lyle Monroe	Rights of Employees	Rejected
44.	#163	Veronica Sullivan	Rights of the Committed	Rejected
45.	#165	Jerome T. Loendorf	Religious taxation	Rejected
46.	#167	Lyle Monroe	Religious freedom	Adopted

APPENDIX C

WITNESSES HEARD BY COMMITTEE

1. Duane W. Welker - Individual - Hamilton.

2. Robert E. Miller - Montana Press Association - Helena Freedom of the Press.

3. Robert D. Watt - Montana Student Presidents' Association - Rights of 18 year olds.

4. Gerald L. McCurdy - NHF - Hamilton - In support of good government.

5. Roy G. Crosby, Jr. - Citizens for Constitutional Government - Missoula - Preamble.

6. Carol and Francis Mitchell - Montana Common Cause - Helena - Right to Know.

7. Reverend James H. Provost - Montana Catholic Conference - Helena - Freedom of Religion.

8. Gerald L. McCurdy - NHF - Hamilton - 18 year old rights.

9. John Murphy - Intern - Great Falls - Public Health, Undeclared wars and the Environment.

10. Francis J. Raucci - Montana Catholic Conference - Great Falls - Freedom of Religion.

11. Steven F. Coldiron - Montana Low-Income Organization - Helena - Delegate Proposal #34, Rights upon termination of state supervision.

12. Roy Crosby, Jr. - Citizens for Constitutional Government - Helena - Rights of Accused.

13. William R. Cainan - Masons - Helena - Article IV.

14. Bonnie Wallem - League of Women Voters of Montana - Helena - should there be a Bill of Rights in the Constitution?

15. Norman D. Ostrander - Seventh Day Adventist Church - Helena - Article IV.

16. Mrs. Irving Boettger - Individual - East Helena - Right to Privacy, Environment.

17. Daniel J. Foley - Lee Newspapers - Helena - Public access and right to privacy.

18. Evelyn Schallaire - Individual - Martin City - Proposal #32.

19. Lewis E. Yearout - Montana Arms Collectors Association - Great Falls - Right to Bear Arms.

20. Dr. H. W. C. Newberry - Individual - Kalispell - Right to Bear Arms.

21. A. Bickstad - Individual - Boulder - Right to Bear Arms.

22. Natalie Cannon - Helena Branch, American Association of University Women - Helena - Discrimination.

23. Maxine Johnson - AAUW - Missoula - Discrimination.

24. Sidney Smith - Department of Labor and Industry - Helena - Human Rights.

25. Elma Peck - Business and Professional Women - Helena - Equal Rights.

26. Bess R. Reed - Montana Federation Women's Clubs - Missoula - Equal Rights.

27. Bernard L. Dan - Individual - Boulder - Right to Bear Arms.

28. Orson Topham - National Association to Keep and Bear Arms - Helena - Right to Bear Arms.

29. Raymond Lay - National Association to Keep and Bear Arms - Helena - Right to Bear Arms.

30. Raymond Hoem - Montana Rifle Association - Big Timber - Article III, Section 13.

31. Kenneth Henry - Individual - Helena - Right to Bear Arms.

32. Mavis Scott - Wamubdi-Ota Indian Club - Poplar - Rights of those under the age of majority.

33. Lynn Lueppe - Tatanka Ska Indian Club - Poplar - Rights of those under the age of majority.

34. Vincent P. Matule - Individual - Helena - Childrens' rights.

35. Mrs. Lois K. McMeekin - Individual - Helena - Rights of those under the age of Majority.

36. Mary Anne Fisher - Montana Advisory Council on Children and Youth - Helena - Rights of those under the age of Majority.

37. Mavis McKelvey - Montana League of Conservation Voters - Missoula - Environmental Protection.

38. Darlene Grove - Individual - Helena - Environment.

39. Cecil Garland - Montana Wilderness Association - Lincoln - Public Trust.

40. William D. Tomlinson - Montana League of Conservation Voters - Missoula - Environmental protection.

41. Robert E. LeProwse - Montana Woodland Council - Missoula - Environment.

42. George Darrow - State Representative, Yellowstone County - Billings - Environmental protection.

43. C. Louise Cross - Individual - Chairman, Natural Resources Committee

44. C. B. McNeil - Polson Outdoors - Polson - Delegate proposals #20 and 21.

45. Leonard Campbell - Environmental Protection Agency- Denver - Environmental protection.

46. Irwin Dickstein - Federal Environmental Protection Agency - Denver - Environmental protection.

47. Robert R. DeSpain - U. S. Environmental Protection Agency - Denver.- Environmental protection.

48. Dave Wagoner - Environmental Protection Agency - Denver - Environmental protection.

49. Keith O. Schwab - Environmental Protection Agency - Littleton - Environmental Protection.

50. Barney Reagan - Individual - Helena - Ordinance I, Section 2.

51. Kenneth Henry - Individual - Helena - Article 3, Section 4.

52. Francis Satterthwaite - Inter-tribal Policy Board - Helena - Ordinance I, Section 2.

53. Will Roscoe - Sentinel High School - Missoula - Rights of 18 year olds.

54. Stephen M. Sherick - Sigma Phi Epsilon Fraternity - Missoula - Rights of 18 year olds.

55. Kenneth Henry - Individual - Helena - Euthanasia.

56. Bob Campbell - Delegate - Missoula - Delegate Proposal #13.

57. Jerry Cate - Delegate - Proposal # 13.

58. James Tomlinson - Hellgate High School - Missoula - Rights of 18 year olds.

59. Mike Barrett - Hellgate High School - Missoula - Rights of 18 year olds.

60. Kurt Krueger - Individual - Helena - Rights of 18 year olds.

61. Ed Smith - Individual - Missoula - Rights of 18 year olds.

62. William E. Koerner - Individual - Hamilton - Opposing rights of 18 year olds.

63. Joyce M. Franks - Individual - Alberton - Right to die.

64. Carl Rostad - Individual - Helena - Rights of 18 year olds.

65. Mrs. Stella Filipowicz - Individual - Great Falls - Right to live.

66. Bill Turner - Individual - Helena - Capital Punishment.

67. Duane W. Welker - Individual - Hamilton - #45.

68. Frank R. Sennett - Department of Social and Rehabilitation Services - Helena - #45.

69. Carol Mitchell - Individual - Helena - Basic Rights.

70. Jack R. Carlson - Montana Chapter, National Association Social Workers - #45.

71. Larry Juelfs - Invited by Committee - Great Falls - #45.

72. Jim Raniere - Welfare Rights Organization - Great Falls - #45.

73. Malyn Oleson - Welfare Rights Organization - Great Falls - #45.

74. Doris Flesch - Welfare Rights Organization - Great Falls - #45.

75. Minnie McReynolds - Welfare Rights Organization - Great Falls - #45.

76. Shirley Malkuck - Welfare Rights Organization - Great Falls - #45.

77. Irene Houle - Welfare Rights Organization - Great Falls - #45.

78. Sister Providencia - The Church and Academic Communities - #45.

79. Steven Coldiron - Montana State Low Income Organization Helena - #45.

80. Kenneth Henry - Individual - Helena - Euthanasia.

81. Larry Elison - Individual - Missoula - Right of Privacy.

82. Gerald L. McCurdy - Individual - Hamilton - Basic Necessities.

83. Jim Dana - Individual - Missoula - #45.

84. Patricia A. Denny - Individual - Missoula - Education.

85. Bob Sorenson - ASOM - Missoula - Education.

86. Tom Dailey - Individual - Missoula - School boards.

87. John Murphy - Individual - Missoula - Various.

88. Leroy F. Berven - Associated Students of University of Montana - Education.

89. Frank LaMere - Eastern Montana College - Billings - Indian Education.

90. Dale Kindness - Eastern Montana College - Billings - Indian Education.

91. Clara Lee McMakin - Eastern Montana College - Lamedeer - Indian Education.

92. Calvin B. Herrera - Eastern Montana College - Indian Education.

93. Stan Juneau - Eastern Montana College - Billings - Indian Education.

94. John R. Christensen - University of Montana - Missoula - Education.

95. Wayne Gildroy - Montana Student Presidents' Assn. - Bozeman - #142.

96. Frank Dudas - ASMSU - Bozeman - Education.

97. Robert Jovick - Montana Student Presidents' Assn. - Bozeman - Education.

98. Harold E. Gray - University of Montana - Missoula - Equal educational opportunity.

99. Dwight A. Billedeaux - American Indian - Billings - Education.

100. Gary Kemble - Indians - Missoula - Indian Rights.

101. Willis M. McKeon - Montana Associated Utilities - Malta - #75 and 125.

102. Charles C. Lovell - Great Falls Gas Co. - Great Falls - #75 and 125.

103. John Carl - Montana Power Co. - Butte - #75.

104. Donald A. Douglas - Dept. of Highways - Helena - #75 and #125.

105. George Darrow - Representative - Billings - #75.

106. John B. Staigmiller - Individual - Cascade - Eminent Domain.

107. Edwin S. Booth - Montana Railroad Assn. - Helena - #75.

108. Gene A. Picotte - General Telephone of the N.W. and Montana-Dakota Utilities - Helena - #75 and 125.

109. Mike Meloy - Privacy and wiretapping.

110. Kayle Jackson - Individual - Bozeman - Search and Seizure.

111. Lewis E. Yearout - Montana Arms Collectors Association - Great Falls - Proposal #4.

112. H. W. C. Newberry - Individual - Kalispell - Right to keep and bear arms.

113. Dr. George Usterman - Individual - Great Falls - Proposal #4.

114. Robert D. McDonald - Individual - Helena - Concealed Weapons.

115. Raymond Lay - National Association to Keep and Bear Arms - Helena - Gun registration and taxation.

116. Charles L. Bartelt - Individual - Great Falls - Gun registration.

117. Don Osburn - Cascade County Wildlife Association - Great Falls - Gun control.

118. Orsen Topham - National Association to Keep and Bear Arms - Helena - Proposal #4.

119. Daniel J. Masse - Montana Rifle and Pistol Association - Treasure State Outfitters - Clinton - Proposal #4.

120. Dan Neal - Beartooth Mountain Men - Muzzle Loaders - Great Falls - Right to keep and bear arms.

121. Dorothy Bradley - State Representative - Gallatin - Public trust.

122. Patti Meier - GASP of Missoula - Grant Creek - Environmental Rights.

123. Cecil Garland - Individual - Lincoln - Public trust.

124. Joe Roberts - Individual - University of Montana Law School - Right to die.

125. Francis Mitchell - Montana Common Cause.

126. Sister Providencia - Individual - College of Great Falls - Capital Punishment.

127. Miss Gerry Fenn - Montana Advisory Council on Children - Helena - Rights of those under the age of majority.

128. Jim Pippard - Community Coordinated Child Care - Helena - Rights of those under the age of majority.

129. Earl J. Barlow - Indian Education Supervisor - Helena - Indian education.

130. George Darrow - Individual - Billings - Comments on Sections 1, 4 and 14.

131. Robert D. Watt - Montana Student Presidents' Association - Missoula - Helena - Adult rights.

132. Martin L. Staley - Individual - Wolf Creek - Rights of majority to 18 year olds, with restrictions.

133. Noel Larivee - Missoula - Individual - Right to know.

134. Don Holtz - Montana Common Cause - Helena - Right to know.

135. Bonnie Wallem - League of Women Voters of Montana - Helena - Clean environment, right to know.

136. Ray Gulick - Individual - Joplin - Brief history of the present Montana State Constitution.

137. William Denny, Sr. - Montana Inter-Tribal Policy Board - Box Elder, Montana - Indian Rights.

138. Carson Boyd - Montana Inter-Tribal Policy Board - Brockton - Indian Rights.

APPENDIX D

ROLL CALLS ON PROPOSAL

MEMBER	SECTION/Pre. 1	2	3	4	5	6	7	8	9	10	11	12	TOTAL Y	N	A
Wade J. Dahood, Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Chet Blaylock, V. Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Bob Campbell	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Dorothy Eck	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Donald R. Foster	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
R. S. (Bob) Hanson	Y	Y	N	N	Y	Y	Y	Y	Y	N	Y	Y	Y	9	3	0
George H. James	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Rachell K. Mansfield	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Lyle R. Monroe	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Marshall Murray	Y	Y	Y	N	Y	Y	Y	Y	Y	N	Y	Y	Y	10	2	0
Veronica Sullivan	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
TOTAL Yea	11	11	10	9	11	11	11	11	11	9	11	11	11			
TOTAL Nay	0	0	1	2	0	0	0	0	0	2	0	0	0			
TOTAL Absent	0	0	0	0	0	0	0	0	0	0	0	0	0			

APPENDIX D

ROLL CALLS ON PROPOSAL

MEMBER SECTION	13	14	15	16	17	18	19	20	21	22	23	24	25	TOTAL Y	TOTAL N	TOTAL A
Wade J. Dahood, Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Chet Blaylock, V. Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Bob Campbell	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Dorothy Eck	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Donald R. Foster	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
R. S. (Bob) Hanson	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
George H. James	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Rachell K. Mansfield	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Lyle R. Monroe	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Marshall Murray	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	10	2	0
Veronica Sullivan	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
TOTAL Yea	11	10	10	11	11	11	11	11	11	11	11	11	11			
TOTAL Nay	0	1	1	0	0	0	0	0	0	0	0	0	0			
TOTAL Absent	0	0	0	0	0	0	0	0	0	0	0	0	0			

ROLL CALLS ON PROPOSAL

MEMBER SECTION	26	27	28	29	30	31	32	33	34					TOTAL Y	TOTAL N	TOTAL A
Wade J. Dahood, Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Chet Blaylock, V. Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Bob Campbell	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Dorothy Eck	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Donald R. Foster	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
R. S. (Bob) Hanson	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
George H. James	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Rachell K. Mansfield	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Lyle R. Monroe	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Marshall Murray	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Veronica Sullivan	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
TOTAL Yea	11	11	11	11	11	11	11	11	11							
TOTAL Nay	0	0	0	0	0	0	0	0	0							
TOTAL Absent	0	0	0	0	0	0	0	0	0							